TCA, Inc.
TELECOMMUNICATIONS CONSULTANTS

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May 6, 1996

Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

Dear Secretary:

Enclosed herewith for filing are the original and four copies of TCA, Inc. - Telecommunications Consultants Reply Comments regarding CC Docket No. 96 - 45, Notice of Proposed Rulemaking and Order Establishing Joint Board.

Sincerely,

Randy Zach

Randy Zach

RZ;grp

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

REPLY COMMENTS OF TCA, INC. - TELECOMMUNICATIONS CONSULTANTS

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TCA, Inc. - Telecommunications Consultants (TCA) files these Reply Comments in response to the *Notice of Proposed Rulemaking and Order Establishing Joint Board* (*NPRM*) released in this docket on March 8, 1996. This proceeding is examining implementation of Section 254 of the Telecommunications Act of 1996 (Act).

I. Introduction

These Reply Comments will respond to others' Comments, and recommend a universal service approach for the Federal Communications Commission (FCC) to select. Competition will not develop everywhere at the same time. Local exchange carriers (LECs) that face competition should be subject to new rules. LECs that are not in a competitive market should continue under current rules until competition develops, or they choose to migrate to the new rules. Current support mechanisms should only be modified to support the intent of the Act.

The <u>sufficiency</u> of the universal service funding (as mentioned in Section 254(d) of the Act) must be maintained through any additional rulemakings. Cost based funding is critical to following through on this sufficiency directive.

II. Support for Rural, Insular and High-Cost Areas

Some of the concerns addressed here include: who should pay into the fund, who should receive funding, what is the measurement, and how large should the fund be? These issues become paramount to the preservation and advancement of universal services for "all regions of the Nation." [Act, Sec. 254(b)(3)]

A. Who Supports the Fund?

Section 254(d) of the Act answers this question with the statement that "every telecommunications carrier that provides interstate telecommunications services shall contribute." In addition, the total amount of the funding should be "sufficient...to preserve and advance universal service." [Act, Sec. 254(d)] Section 254(d) also states that the funding should be "on an equitable and nondiscriminatory basis." The basis should be interstate retail revenues billed to end users.

Any cap on the amount of funding is contrary to the sufficiency mandate of the Act. Funding must be sufficient enough to meet the newly established universal service definition.

B. Who is Eligible to Receive Fund Payments?

An Eligible Telecommunications Carrier (ETC) is defined in Section 102(e) of the Act. ETCs must use "its facilities or a combination of its own facilities and resale of another carrier's services...and advertise the availability of such services...." With proper approval by the state, ETCs would be eligible for support.

Only resellers who are approved as ETCs and who own facilities can receive universal service funding. Support should follow the facilities. Those who have invested in the facilities should get the support for its continuance, maintenance, and upgrades. ETCs should only be eligible for support in the areas that they serve through their own facilities. They should not receive support for any portion of a service that they provide through resale. If a reseller becomes eligible for funding on a facility that they are leasing from a facilities based carrier, then the rate they pay must be fully cost-based. Since some resold services are to be priced at retail less avoided cost, those services will not be priced at cost. Universal Service funding must not flow to a reseller.

C. Who Will Distribute the Funds?

NECA should be the fund administrator. They are the most logical and efficient choice and have the necessary experience. There should be a separate oversight Board from NECA's current Board. This Board would be representative of the entire telecommunications industry. The industry should not try to reinvent the wheel when NECA is capable and professional enough to perform the job without bias.

D. Who are the Recipients of the Funds?

The support should flow to the ETC, not to the customer. This will facilitate the Act's mandate that funds should be used to further develop and maintain universal services. Specifically, the Act states in Section 254(e) that recipients "use that support only for the provision maintenance and upgrading of facilities and services for which the support is intended."

MFS Communications Company, Inc. recommends in its comments that support should be given to the customers and not to the telephone companies. This methodology can not and will not promote universal services. MFS further states, "Rather than provide universal service support to telephone companies to support operations, costs and facilities that may have no relationship with universal service, universal service support should follow customers who can effectively direct it to whomever provides supported service to them." [MFS Comments, p. 13]

Some commentors (e.g. MFS at page 15) suggest credits on customers' bills. This methodology, while it may seem reasonable, is impractical. For instance, customer "A" is assigned an amount of universal service funding. By the time this amount is slated to appear on customer "A"'s bill as a credit, he/she may not still be with the same carrier that the funding was originally based upon. This is only one of the reasons why credits on customers' bills are not warranted. Support must flow to the eligible telecommunications carrier.

The Wyoming Public Service Commission was correct when they "specifically urge[s] that vouchers, 'telephone stamps,' or other forms of payment directly to customers *not* be used. Payments to providers are much simpler to administer and to account for." [Wyoming Public Service Commission Comments, p. 6]

E. What should be the basis of distribution?

ETC's actual costs should be the basis of fund distribution. This basis has seen support from many commentors (e.g. Missouri Public Service Commission at p. 9). The Benchmark Cost Model (BCM) does not provide an accurate assessment of the actual costs to serve rural areas. Not to mention that it is disruptive to the current system. Even MCI (a co-sponsor of the BCM) suggests changes to the BCM in their comments. They admit that it is flawed in rural areas, it is based on only residential lines, and does not take into account wireless services. Southwestern Bell Telephone (SWBT), states that the BCM "does not provide a reasonable comparison to actual costs by study area (company) or by wire center." [SWBT Comments, p. 14]

There will be no model that can adequately determine the cost of providing universal service for small rural telephone companies. Larger companies may be able to deal with the imperfections of a model because where it understates costs in one area, it will overstate them in another. For a small one exchange company, if the model is not precise, there is no remedy. The imprecise nature of a model will not meet the goal of the act to target support to the provision of universal service.

III. Schools, Libraries, and Health Care Providers

The goals and principles outlined in the NPRM are currently being addressed by most states. Where something is already being accomplished, it is unnecessary to duplicate regulation. Interstate funding for these entities should be kept separate from other current or proposed federal funding mechanisms.

IV. Average Schedule Company Concerns

Today, only the smallest of NECA average schedule companies receive USF payments. Average schedule companies should not have their universal service funding be limited to size only. Large, rural and high-cost average schedule LECs should be entitled to universal service funds for their high-cost areas just as cost companies.

V. Study Area Changes

Reasonable and predictable rules need to be established to facilitate transitions where study are boundaries need to change in the case of mergers and acquisitions. The current waiver process delays these transactions and increases their costs. TCA recommends that the purchasing LEC receive any USF at the date of the transfer of assets. When this is done, the support is flowing to the entity that actually owns the facilities and is responsible for the facilities. This change will bring the rules into agreement with the new universal service definition. Further, caps on individual transactions run contrary to the "sufficiency" intent of the Act.

VI. Future Universal Service Mechanisms

As discussed above, current universal service mechanisms need little modification in order to continue providing universal service in the areas served by small rural LECs. Competition will come to the urban areas of the country first, and, over time may migrate into some rural areas. The speed and nature of this migration will depend on many factors including the development of new competition rules from the FCC and state regulatory bodies. Other rules from the Act will also have an effect on the development of competition, including these universal service rules. Therefore, it makes sense to let the initial battles of competition take place in the urban and suburban markets.

Small LECs providing service in areas where there is no competition should be allowed to continue under current rules for at least seven years. Periodically, a review of this time frame could take place to consider its extension.

Some rural LECs have already experienced "bypass" of their facilities on a limited basis. However, the economics of the rural areas of the country are not as attractive as urban areas. For example, low densities, and therefore, low volumes, have not brought droves of interexchange carriers to the equal access ballots of small rural LECs. Some areas have still not received a request for equal access. We expect to see similar patterns in other types of competition.

Every small rural LEC is different. There are differences in costs, densities, potential competitors, proximity to urban areas, and state commission rules, for example. These differences will cause differing levels of competitive interest. Service to the largest town in a small LEC area may attract one kind of competition sooner than even other parts of their study area. For these reasons, it makes sense for some small LECs to begin preparations for competition before others need to be concerned. An optional competitive framework should be considered to allow for this flexibility. Within this framework, small rural LECs would be able to restructure costs and rates and provide any necessary filings to allow competition to proceed.

Small LECs do not have the averaging flexibility of larger LECs when it comes to making investment and upgrade decisions. They must time their upgrades to new technologies so that their investment can remain useful for a number of years. They do not want to be left with under-depreciated, obsolescent plant and equipment.

In addition, a reexamination of depreciation rates is warranted. These rates must be matched with the actual useful lives of the investments. As NECA emphasized, "the Commission must also recognize that incumbent LECs historically have been required to recover substantial plant investments using artificially long depreciation schedules." [NECA Comments, p. 10]

The trigger for this framework may come from one or more events. These events might include the approval by the state commission of a Bona Fide Request (BFR), the small LEC's decision to consider competing outside of its area, or by the general position of preparing for future competition, should it come.

The distinct differences between companies like US West and the small LEC that serves 100 subscribers must be reflected in the universal service rules. A new optional framework just for small LECs needs to be considered. The concepts of a new optional Universal Service Support framework should include the following principles:

1. Build on the foundation of current settlements and separations.

2. Restructure implicit support mechanisms (DEM), by moving the support to the Universal Service Fund.

3. Continue to recover a portion of loop costs from each service that uses the loop, including access services. If any change must be made, then use subscriber line usage to make the allocation instead of the current 25% allocation.

3. Adjust depreciation rates to reflect remaining economic life.

4. Establish a nationwide ceiling for local service rates, taking into consideration the requirement to provide affordable universal service that is reasonably comparable between rural and urban areas. Include consideration of calling areas and other rural factors in the development of this rate.

5. Provide Universal Service Funding for the local revenue requirement that is not recovered from the nationwide ceiling local service rate.

6. Allow LECs to prepare their studies in enough detail to target universal service funds to parts of their serving areas that are high cost. Do not establish an arbitrary geographic unit like a census block group. Variations between serving areas make it impossible to properly target universal service funds using an arbitrary geographic unit.

7. Other concepts that allow for a framework to accommodate the continuing responsibilities of small LECs, including the carrier of last resort.

Any changes from the current support mechanisms must be replaced by new, specific and predicable support mechanisms to preserve and advance universal service.

VII. CONCLUSION

The differences between small LECs and the rest of the industry are significant. Just considering the size of an area served illustrates the differing challenges of universal service for an incumbent local exchange provider.

TCA clients include small LECs that have universal service carrier of last resort responsibilities for areas larger than some states. These clients include at least 15 "small" LECs that serve an area in square miles larger than the state of Rhode Island, at least 10 clients that serve an area larger than Delaware, and one that serves an area larger than Connecticut. In fact, one company with one exchange, serves an area 75% of the size of the state of Rhode Island. All of these companies serve as few as several hundred subscribers to a little more than 10,000. Potential competitors will compete in the aforementioned states before they rush in to compete in the less dense, small LEC areas.

Valid support for high cost areas must continue. The current USF is specific, predicable and sufficient for LECs that are not serving a competitive market. A new framework should be established in preparation for competition. Small LECs should be given the option of migrating to the new framework before competition develops in their area, but not required to change. Making radical changes for everyone, as proposed by many potential competitors in urban areas, will disturb the balance that has been achieved and the service that has been provided to customers in rural areas.

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Further NPRMs should be issued to study and evaluate these very critical issues. The FCC must not be hasty in their rulemaking on these concerns which will affect LECs and rural customers who depend on the current Universal Service Funding mechanism

Respectfully submitted,

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May 7, 1996